

**IN THE SUPREME COURT
STATE OF GEORGIA**

CASE NO. S19A0769

COALITION FOR GOOD GOVERNANCE,
RHONDA J. MARTIN, SMYTHE DUVAL AND JEANNE DUFORT

Appellants,

v.

BRAD RAFFENSPERGER, Secretary of State, FULTON COUNTY BOARD OF
REGISTRATION AND ELECTIONS, GWINNETT COUNTY BOARD OF
REGISTRATIONS AND ELECTIONS, and GEOFF DUNCAN

Appellees.

SECOND SUPPLEMENTAL BRIEF OF APPELLANTS

SUPERIOR COURT OF FULTON COUNTY
CASE NUMBER 2018CV313418

BRUCE PERRIN BROWN

Georgia Bar No. 064460

bbrown@brucepbrownlaw.com

BRUCE P. BROWN LAW LLC

1123 Zonolite Rd. NE, Suite 6

Atlanta, Georgia 30306

(404) 881-0700

SECOND SUPPLEMENTAL BRIEF OF APPELLANTS

Pursuant to Rule 25 of the Rules of the Georgia Supreme Court, Appellants Rhonda J. Martin, Smythe DuVal and Jeanne Dufort (“Plaintiffs”) file this Second Supplemental Brief to bring to the Court’s attention the filing today in the Superior Court of a Motion to Supplement the Record, which Motion attaches emails to Superior Court Judge Grubbs, Superior Court Judge Russell, and emails between counsel. Attached as Exhibit 1 is a copy of said Motion.

Respectfully submitted this 6th day of May, 2019.

/s/Bruce P. Brown

Bruce P. Brown

Georgia Bar No. 064460

bbrown@brucepbrownlaw.com

BRUCE P. BROWN LAW LLC

1123 Zonolite Rd. NE

Suite 6

Atlanta, Georgia 30306

(404) 881-0700

Counsel for Appellants

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing Supplemental Brief of Appellants upon all counsel of record by email addressed to:

Kaye Woodard Burwell
Office of the Fulton County Attorney
141 Pryor Street, NW
Suite 4038
Atlanta, Georgia 30303
Kaye.burwell@fultoncountyga.gov

*Counsel for Appellee Fulton County
Board of Registrations and Election*

Josh Belinfante
Robbins Ross Alloy Belinfante
Littlefield LLC
500 Fourteenth St. NW
Atlanta, Georgia 30318
Josh.Belinfante@robbinsfirm.com

*Counsel for Appellee Secretary of
State*

Bryan P. Tyson
Strickland Brockingham Lewis LLC
Midtown Proscenium Suite 2200
1170 Peachtree St. NE
Atlanta, Georgia 30309
bpt@sblaw.net

*Counsel for Appellee Gwinnett
County Board of Registrations and
Elections*

Edward H. Lindsey, Jr.
Dentons
303 Peachtree St. NE
Suite 5300
Atlanta, Georgia 30308
edward.lindsey@dentons.com

Counsel for Appellee Geoff Duncan

This 6th day of May, 2019.

/s/Bruce P. Brown
Bruce P. Brown
Counsel for Appellants

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

COALITION FOR GOOD
GOVERNANCE, RHONDA J.
MARTIN, SMYTHE DUVAL, AND
JEANNE DUFORT,

Plaintiffs,

v.

ROBYN A. CRITTENDEN, Secretary
of State of Georgia, et al.,

Defendants.

Civil Action No. 2018CV313418

PLAINTIFFS' MOTION TO SUPPLEMENT THE RECORD

Plaintiffs move to supplement the record in this case with email communications between the Court and counsel, true and correct copy of which are attached hereto as Exhibit A and B, and true and correct copies of email communications between counsel, attached hereto as Exhibit C and D. An affidavit authenticating these documents is attached hereto as Exhibit E.

Respectfully submitted this 6th day of May, 2019.

/s/ Bruce P. Brown

Bruce P. Brown

Georgia Bar No. 064460

bbrown@brucepbrownlaw.com

Bruce P. Brown Law LLC

1123 Zonolite Rd. NE, Suite 6

Atlanta, Georgia 30306

(404) 881-0700

CERTIFICATE OF SERVICE

I have this day served a copy of the foregoing via the Court's e-filing system to all counsel of record.

This 6th day of May, 2019.

/s/Bruce P. Brown
Bruce P. Brown
Attorney for Plaintiffs

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Subject: Plaintiffs' Motion to Compel: Coalition for Good Governance, et al. v. Crittenden, et al. - Civil Action No. 2018CV313418

Date: Wednesday, January 16, 2019 at 9:13:50 AM Eastern Standard Time

From: Bruce Brown

To: Adele Grubbs, Bryan Tyson

CC: Burwell, Kaye, Alexander Denton, Laila Tehrani, richard.carothers@carmitch.com, sue@carmitch.com, brian.dempsey@carmitch.com, Lindsey, Jr., Edward H., Thomas.Davis@cobbcounty.org, Vincent Russo, Josh Belinfante, Perkins-Hooker, Patrise, DWare@hallboothsmith.com, Ringer, Cheryl, JOvercash@7Jad.com, csims@7Jad.com, chall@lmjc.net, Brian Lake, ccorreia@law.ga.gov

Attachments: 20190116 Lt Gov Plaintiffs' Motion to Compel Final with MB Affidavit.pdf, 20190116 Lt Gov Proposed Order Granting Motion to Compel.pdf

Judge:

I have attached Plaintiffs' Motion to Compel, which details Defendants' failure to comply with this Court's Order on Pending Motions, and a proposed order. I am e-filing the motion papers shortly. Plaintiffs believe this offers additional grounds for continuing the trial of the case.

Respectfully submitted,
Bruce Brown

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Subject: RE: No. 2018cv313418, Petition to Contest Election of Lt. Governor
Date: Wednesday, November 28, 2018 at 12:06:31 PM Eastern Standard Time
From: Moore, Gilda
To: Bruce Brown, Cristina Correia, Ringer, Cheryl, bdbryan@dekalbcountyga.gov, Bryan Tyson, Rayburn, Kevin, Josh Belinfante
CC: Lowman, David, Burwell, Kaye, Germany, Ryan, info@teamduncan.org, Clark, Al
Attachments: image001.jpg, image002.png, image003.png, image004.jpg

Good afternoon Mr. Brown,

Judge Russell is in trial. She disagrees that the statute requires two dates. You may file something if you wish to. I have been directed not to communicate further on this matter by email.

Regards,

From: Bruce Brown [mailto:bbrown@brucepbrownlaw.com]
Sent: Wednesday, November 28, 2018 11:42 AM
To: Moore, Gilda; Cristina Correia; Ringer, Cheryl; bdbryan@dekalbcountyga.gov; Bryan Tyson; Rayburn, Kevin; Josh Belinfante
Cc: Lowman, David; Burwell, Kaye; Germany, Ryan; info@teamduncan.org; Clark, Al
Subject: Re: No. 2018cv313418, Petition to Contest Election of Lt. Governor

Ms. Moore,

This email concerns the setting of the answer date and the hearing on this matter and requests a clarification. Our reading of the election statute is that it contemplates two dates, an answer date, and then, later, a trial or hearing.

As to the answer date, 21-2-524 (f) states that the superior court shall issue notice requiring defendants "to appear and answer such petition, on a day to be fixed in such notice, not more than ten days nor less than five days after the service of such notice."

As for the hearing or trial, 21-2-525(a) states: "Within 20 days after the return day fixed in the notice as provided in subsection (a) of Code Section 21-2-524 to the defendant" [that is, the day fixed for the defendant to "to appear and answer"] "the presiding judge shall fix a place and time for the hearing of the contest proceeding." Section 21-2-526 then states that all issues of a contest "shall be fully tried and determined by the court" without a jury, unless a jury is demanded by a party before the call of the case.

Based on these provisions, it appears that the statute contemplates an answer date

followed by a trial date. There is language in the section dealing with the answer that requires the defendants "to appear" on the answer date but that must be more like making an "appearance" as a party does when it files a "notice of appearance," rather than physically appearing in Court and defending the case on the merits, particularly when the sections on the trial itself are considered.

Based on the foregoing reading of the statute, Plaintiffs request a clarification as to the schedule and respectfully suggest the following:

First, that the defendants be ordered to answer and appear (as in file a notice of appearance) by December 6, 2018, as indicated in the Court's order as amended in your email.

Second, that the Court hold a preliminary hearing or status conference at the time specified, 1 pm on December 6, to address preliminarily issues related to the trial of the matter, including stipulations, evidence, discovery, etc., as well as any special issues raised under the election contest laws.

Third, that the Court fix a date for the trial itself. I note that the parties may demand a jury trial before the case is called, and Plaintiffs may do so. Though Plaintiffs believe that the uncontroverted evidence will establish that the election was "so defective" as to "place in doubt the result," 21-2-526(d), Plaintiffs would recommend that two days be set aside for the trial of the case.

Respectfully,

Bruce Brown

From: "Moore, Gilda" <Gilda.Moore@fultoncountyga.gov>

Date: Wednesday, November 28, 2018 at 10:28 AM

To: Cristina Correia <ccorreia@law.ga.gov>, "bbrown@brucepbrownlaw.com" <bbrown@brucepbrownlaw.com>, Cheryl Ringer <Cheryl.Ringer@fultoncountyga.gov>, "bdbryan@dekalbcountyga.gov" <bdbryan@dekalbcountyga.gov>, Bryan Tyson <bpt@sblaw.net>, "Rayburn, Kevin" <krayburn@sos.ga.gov>

Cc: "Lowman, David" <David.Lowman@fultoncountyga.gov>, "Burwell, Kaye" <Kaye.Burwell@fultoncountyga.gov>, "Germany, Ryan" <rgermany@sos.ga.gov>, "info@teamduncan.org" <info@teamduncan.org>, "Clark, Al" <Al.Clark@fultoncountyga.gov>

Subject: RE: No. 2018cv313418, Petition to Contest Election of Lt. Governor

Correction, Thursday, December the 6th at 1:00 p.m.

From: Moore, Gilda

Sent: Wednesday, November 28, 2018 10:27 AM

To: 'Cristina Correia'; 'Bruce Brown'; Ringer, Cheryl; bdbryan@dekalbcountyga.gov; Bryan Tyson; Rayburn, Kevin

Cc: Lowman, David; Burwell, Kaye; Germany, Ryan; info@teamduncan.org; Clark, Al

Subject: RE: No. 2018cv313418, Petition to Contest Election of Lt. Governor

Good morning all, there was an error in the order regarding the date of the hearing. The hearing will be held on Wednesday, December the 6th at 1:00 p.m. Sorry for the error.

Regards,

From: Cristina Correia [mailto:ccorreia@law.ga.gov]

Sent: Wednesday, November 28, 2018 10:04 AM

To: 'Bruce Brown'; Ringer, Cheryl; bdbryan@dekalbcountyga.gov; Bryan Tyson; Rayburn, Kevin; Moore, Gilda

Cc: Lowman, David; Burwell, Kaye; Germany, Ryan; info@teamduncan.org; Clark, Al

Subject: RE: No. 2018cv313418, Petition to Contest Election of Lt. Governor

Thanks, Bruce. I assume there is a typo in the hearing date, since Dec. 8th is a Saturday.



Cristina Correia

Senior Assistant Attorney General

Office of Attorney General Chris Carr

Government Services & Employment

Tel: 404-656-7063

ccorreia@law.ga.gov

Georgia Department of Law

40 Capitol Square SW

Atlanta, Georgia 30334

From: Bruce Brown [mailto:bbrown@brucepbrownlaw.com]

Sent: Wednesday, November 28, 2018 10:00 AM

To: Cristina Correia; Cheryl Ringer; bdbryan@dekalbcountyga.gov; Bryan Tyson; Rayburn, Kevin; gilda.moore@fultoncountyga.gov

Cc: David Lowman; Kaye Burwell; Germany, Ryan; info@teamduncan.org; al.clark@fultoncountyga.gov

Subject: No. 2018cv313418, Petition to Contest Election of Lt. Governor

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Counsel:

I have attached two documents that I received this morning through the electronic filing system.

Thanks,

Bruce Brown

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Subject: Fulton County GEMS Reports
Date: Monday, January 14, 2019 at 5:29:12 PM Eastern Standard Time
From: Ringer, Cheryl
To: Bruce Brown, VRusso@robbinsfirm.com, Alexander.Denton@robbinsfirm.com, richard.carothers@carmitch.com, bpt@sbllaw.net, Josh.Belinfante@robbinsfirm.com, edward.lindsey@dentons.com, Perkins-Hooker, Patrise, Ringer, Cheryl, Burwell, Kaye, Lowman, David
Attachments: Base Precinct Report.pdf, GEMS ELECTION SUMMARY REPORT 11-06-18.pdf, GEMS SOVC REPORT 11-06-18.pdf, Vote Center With Cards Report.pdf

Pursuant to Judge Grubbs' order of January 11, 2019, please find attached the following Fulton County election reports:

Base precinct report
Vote center with cards report
Statement of votes cast report
Summary report

Regards,

Because We Care, We Serve

Cheryl M. Ringer
Senior Assistant County Attorney
Office of the County Attorney
141 Pryor St, S.W.
Suite 4038
Atlanta, GA 30303
(404) 612-0246 (Main)
(404) 612-0263 (Direct)
(404) 730-6324 (Fax)

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Subject: RE: GWINNETT GEMS files

Date: Monday, January 14, 2019 at 5:12:23 PM Eastern Standard Time

From: Bryan Tyson

To: Bruce Brown

CC: Richard Carothers

Bruce,

I was just hitting send on my last two emails when this came through. I sent the first four reports, but the ballot image report has to be done card-by-card and we have over 1,000 cards to run. The staff has been working on it and is continuing to do so as quickly as they can.

Thanks,

Bryan

Bryan P. Tyson
Strickland Brockington Lewis LLP
678.347.2203 (direct)
bpt@sblaw.net

-----Original Message-----

From: Bruce Brown [<mailto:bbrown@brucepbrownlaw.com>]

Sent: Monday, January 14, 2019 5:06 PM

To: Bryan Tyson

Subject: GWINNETT GEMS files

Bryan,

Please produce these documents. Thanks.

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**COALITION FOR GOOD
GOVERNANCE, RHONDA J.
MARTIN, SMYTHE DUVAL, AND
JEANNE DUFORT,**

**Plaintiffs,
v.**

**ROBYN A. CRITTENDEN,
Secretary of State of Georgia,
et al.,**

Defendants.

**CIVIL ACTION FILE
NO. 2018CV31348**

AFFIDAVIT OF BRUCE P. BROWN

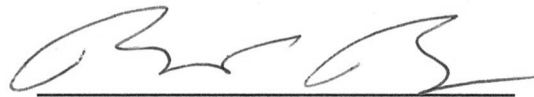
Appeared before me, the undersigned officer duly authorized to
administered oaths, Bruce P. Brown who, after being sworn, states as follows:

1. I represent the Plaintiffs in this action. I am qualified to give this
affidavit, which is based on my personal knowledge.
2. The purpose of this affidavit is to authenticate the four documents
attached to Plaintiffs' Motion to Supplement the Record, filed herewith ("the
Motion").

3. Attached to the Motion are true and correct copies of the following emails in this case:

- A. Email from Bruce P. Brown to Judge Grubbs dated January 16, 2019;
- B. Emails between Bruce P. Brown and Gilda Moore, Deputy Clerk to Judge Constance C. Russell, dated November 28, 2018;
- C. Email from Cheryl Ringer, Deputy Assistant County Attorney, Fulton County to Bruce P. Brown dated January 14, 2019;
- D. Email from Bryan Tyson, counsel to Gwinnett County, to Bruce P. Brown dated January 14, 2019.

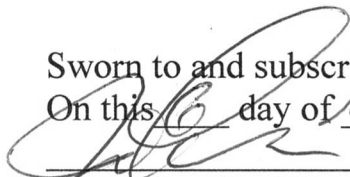
Further Affiant sayeth not.



Bruce P. Brown

Sworn to and subscribed before me:

On this 16 day of May, 2019


Notary Public, State of Georgia

My Commission Expires: ~~My Commission Expires~~ SEAL
February 16, 2020

